

APA-1

TRANSMITTAL SHEET FOR
NOTICE OF INTENDED ACTION

Control No: 560 Department or Agency: Alabama Medicaid Agency

Rule No: 560-X-62-19

Rule Title: Requirements for Full Certification of Regional Care Organizations
New Rule; X Amend; Repeal; Adoption by Reference

Would the absence of the proposed rule significantly harm or endanger the public health, welfare, or safety? no

Is there a reasonable relationship between the state's police power and the protection of the public health, safety, or welfare? yes

Is there another, less restrictive method of regulation available that could adequately protect the public? no

Does the proposed rule have the effect of directly or indirectly increasing the costs of any goods or services involved and, if so, to what degree? no

Is the increase in cost, if any, more harmful to the public than the harm that might result from the absence of the proposed rule? no

Are all facets of the rulemaking process designed solely for the purpose of, and so they have, as their primary effect, the protection of the public? yes

Does the proposed rule have any economic impact? no

If the proposed rule has an economic impact, the proposed rule is required to be accompanied by a fiscal note prepared in accordance with subsection (f) of Section 41-22-23, Code of Alabama 1975.

Certification of Authorized Official

I certify that the attached proposed rule has been proposed in full compliance with the requirements of Chapter 22, Title 41, Code of Alabama 1975 and that it conforms to all applicable filing requirements of the Administrative Procedure Division of the Legislative Reference Service.

Signature of certifying officer: Stephanie Lindsey

Date: 2/18/2016

FOR APD USE ONLY

PUBLISHED IN VOLUME ISSUE NO.

EDITED AND APPROVED BY DOCUMENT NO.

REC'D & FILED

FEB 12 2016

LEGISLATIVE REF SERVICE

ALABAMA MEDICAID AGENCY

NOTICE OF INTENDED ACTION

RULE NO. & TITLE: 560-X-62-.19 Requirements for Full Certification of Regional Care Organizations

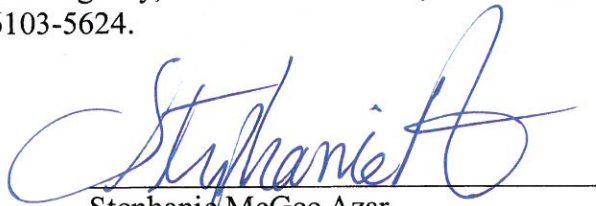
INTENDED ACTION: Amend 560-X-62-.19

SUBSTANCE OF PROPOSED ACTION: The above referenced rule is being amended to clarify the requirements for full certification of regional care organizations.

TIME, PLACE, MANNER OF PRESENTING VIEWS: Written or oral comments may be submitted to the Alabama Medicaid Agency, 501 Dexter Avenue, Post Office Box 5624, Montgomery, Alabama 36103-5624. Agency business hours are 8:00 a.m. to 5:00 p.m. Monday through Friday.

FINAL DATE FOR COMMENT AND COMPLETION OF NOTICE: Written/Oral comments concerning this change must be received by the Alabama Medicaid Agency no later than April 4, 2016.

CONTACT PERSON AT AGENCY: Stephanie Lindsay, Administrative Secretary, Alabama Medicaid Agency, 501 Dexter Avenue, Post Office Box 5624, Montgomery, Alabama 36103-5624.


Stephanie McGee Azar
Commissioner

Rule No. 560-X-62-.19 Requirements for Full Certification of Regional Care Organizations

(1) An organization seeking full certification as a regional care organization (referred to herein also as “applicant”) shall be incorporated as a nonprofit corporation under Alabama law. The certificate of formation of the organization shall mandate that:

(a) No part of the organization’s net earnings shall inure to the benefit of any private shareholder or individual, no substantial part of the activities of the organization shall include carrying on propaganda, or otherwise attempting, to influence legislation (except as otherwise provided in section 501(h) of the Internal Revenue Code of 1986), and the organization shall not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office; and

(b) More than 80 percent of the gross revenues of the organization shall be received from government programs that target low-income, elderly, or disabled populations under titles XVIII, XIX and XXI of the Social Security Act.

(2) In order to seek full certification as a regional care organization the applicant must submit a Medicaid approved application for full certification and provide such documentation required by the Medicaid Agency pursuant to Sections 22-6-150, *et seq.* of the Alabama Code and rules promulgated by the Medicaid Agency

(3) Except as otherwise set forth herein or prescribed in Section 22-6-150, *et seq.* of the Alabama Code and rules promulgated by the Medicaid Agency, the applicant must have met the following timeline and/or benchmarks:

(a) The applicant must have established by no later than October 1, 2014, or as otherwise allowed, a governing board and structure acceptable to the Medicaid Agency as provided in Section 22-6-150, *et seq.* of the Alabama Code and Rules No. 560-X-62-.03 and 560-X-62.05.

(b) The applicant must have demonstrated to the Medicaid Agency’s satisfaction and approval by no later than April 1, 2015, the ability to establish an adequate medical service delivery network that meets the requirements of Rule No. 560-X-62-.12 and federal access standards set forth in 42 CFR §§ 438.206 - 438.210.

(c) The applicant must have demonstrated to the Medicaid Agency’s satisfaction and approval by no later than October 1, 2015, that it has met solvency and financial requirements for a regional care organization as required by Section 22-6-150, *et seq.* of the Alabama Code and Rules No. 560-X-62-.16, 560-X-62-.17, and 560-X-62-.18 by the Medicaid Agency.

(d) The applicant must have demonstrated to the Medicaid Agency’s satisfaction and approval by no later than May 1, 2016, that it is capable of providing services pursuant to a risk contract to be effective October 1, 2016 as provided in Rule 560-X-62-.22.

(e) The timelines and benchmarks set forth in this subsection shall not preclude the applicant from seeking full certification earlier than the dates set forth herein provided it has

demonstrated to the Medicaid Agency's satisfaction and approval that it has met such requirements.

(f) Notwithstanding the above, failure by the applicant to timely meet one or more of the benchmarks set forth in this subsection shall not prevent the Medicaid Agency, at its sole discretion, from granting full certification to the organization as long as it meets all of the benchmarks by October 1, 2016.

(g) Failure to meet and maintain any one of the benchmarks set forth in this subsection shall constitute grounds for denial of an application for full certification.

(4) The Medicaid Agency shall have the power to approve the members of the governing board of the applicant and any organizational and governing documents, which may exist, such as the applicant's articles of incorporation, articles of formation, bylaws, operating agreement, certificate of formation, rules, trust agreements, confidentiality agreements, organizational minutes and/or minutes appointing or designating persons as officers, directors, managers or resolutions or other documents creating an executive committee or other committee and/or appointing members thereto and all other similar or applicable documents and agreements regulating the conduct of the internal affairs of the applicant and all amendments thereto. All appointments of and to committees and all delegations of authority by the organization shall satisfy the requirements of Sections 22-6-150, *et seq.* of the Alabama Code and all other requirements under Alabama law.

(5) The governing body of an organization granted full certification as a regional care organization shall be responsible for the establishment and oversight of its business and affairs. The organization may by resolution of the governing body delegate power and authority as permitted by Alabama law. Any such delegation shall include only the authority specifically delegated. The responsibilities of the governing body of the organization shall include, but not be limited to, the following;

(a) Adoption and enforcement of all policies governing the organization's management of health care services delivery, quality improvement and utilization review programs including biannual meetings at a minimum for the purpose of evaluation and improvement of the health services of the organization and to respond to recommendations and findings of the quality improvement committee;

(b) The governing body shall keep minutes of meetings and other records to document the fact that the governing body is effectively discharging the obligations of its office regarding health services. All records must be maintained for not less than five (5) years;

(c) Assurance that the organization complies with applicable laws and regulations.

(6) The applicant must have established a citizen's advisory committee for the Medicaid region the applicant plans to serve that meets and maintains the requirements of Section 22-6-151(d) of the Alabama Code and Rule No. 560-X-62-.04.

(7) The applicant must be able to demonstrate it meets and maintains the minimum solvency and financial requirements required by Section 22-6-151 of the Alabama Code and Rule No. 560-X-62-.16. The applicant shall also provide such additional financial reports and information as required by the Medicaid Agency and Section 22-6-151(f) of the Alabama Code sufficient to demonstrate to the Medicaid Agency that the organization meets the required solvency and financial requirements.

(8) The applicant must promptly notify the Medicaid Agency of any substantial or material changes in the corporate structure, governance or financial condition of the organization since the time it was granted a certificate for probationary certification. The Medicaid Agency may request additional documentation and information regarding such changes.

(9) The applicant must be current and in good standing with all reporting requirements mandated by rules promulgated by the Medicaid Agency.

(10) The applicant must describe to the Medicaid Agency's satisfaction and approval the demonstrated experience and capacity of the organization and/or its collective principals, officers and directors for managing financial risk, establishing financial reserves, maintaining sufficient net worth and/or adequate solvency and the past experience or expertise of the applicant and/or its collective principals, officers and directors in working as part of a medical service delivery network.

(11) The applicant must demonstrate to the Medicaid Agency's satisfaction and approval that it has created a provider standards committee that meets the requirements of Section 22-6-151(gh) of the Alabama Code and Rule No. 560-X-62-.09.

(12) The applicant must demonstrate to the Medicaid Agency's satisfaction and approval that it has adopted policies and procedures for review of provider contract disputes that meet the requirements of Section 22-6-153(g) of the Alabama Code and Rule No. 560-X-62-.11.

(13) The applicant must demonstrate that it has adopted appropriate policies, procedures and forms, approved by the Medicaid Agency, to assist enrollees and potential enrollees in their enrollment, disenrollment, filing grievances and appeals and as is otherwise needed to assist in understanding the rights, obligations, benefits and requirements of participating in the integrated and coordinated health delivery system set forth in Section 22-6-150, *et seq.* of the ~~Code of~~ AlabamaAlabama Code. The organization's policies, procedures and forms must satisfy Rule No. 560-X-62.-21 and 42 CFR 438.10.

(14) The applicant must demonstrate to the Medicaid Agency's satisfaction and approval that it is organized in a manner consistent with the accomplishment of its stated mission, which shall include, at a minimum, delivery of Medicaid covered health care services in accordance with Sections 22-6-150, *et seq.* of the Alabama Code.

(15) The applicant must demonstrate to the Medicaid Agency's satisfaction and approval its strategy to identify appropriate delivery systems and reimbursement methods in order to align

incentives in support of integrated and coordinated health care delivery throughout the Medicaid region the organization seeks to serve.

(16) All applications for full certification as a regional care organization (hereafter “applications”) must include the following information or documentation for the Medicaid Agency’s review and approval:

(a) The applicant’s name, physical and mailing address, email address, and telephone number;

(b) The name, mailing address, email address, and telephone number of the applicant’s registered agent and each person authorized by the applicant to receive notices and communications relating to the applicant’s application;

(c) The name, mailing address, email address, and telephone number of the primary person whom the Medicaid Agency should contact concerning any questions or issues relating to the organization’s application;

(d) A proposed organizational chart identifying the relationship among the members of the board of directors, officers, controlling persons, owners, participants, medical director and/or administrator of the applicant and any other persons responsible for the healthcare services of the applicant, as applicable;

(e) The applicant’s applicable National Provider Identifier (NPI) number(s), Medicaid ID number(s) Taxpayer Identification Number(s) (TIN), and any state professional or facility license number(s);

(f) Identification of the Medicaid region the applicant seeks to serve;

(g) Identification of the applicant’s Certificate to Collaborate Number issued by the Medicaid Agency; and

(h) Copies of ~~any-current~~ organizational and governing documents which may exist such as the applicant’s articles of incorporation, bylaws, operating agreement, certificate of formation, rules, trust agreements, organizational minutes and/or minutes appointing or designating persons as officers, directors, managers, resolutions or other documents creating an executive committee or other committee and/or appointing members thereto, management services agreements, administrative services agreements, conflict of interest policies and all other similar or applicable documents and agreements regulating the conduct of the internal affairs of the applicant and all amendments thereto, which may exist.

(17) All applications shall also include the following information concerning the applicant’s governing board of directors for each Medicaid region the organization plans to serve for the Medicaid Agency’s review and approval:

(a) The name, business, occupation or medical specialty, mailing address, email address and telephone number of each board of directors member;

(b) The National Provider Identifier (NPI) number(s), Medicaid ID number(s), Taxpayer Identification Number(s) (TIN), Social Security Number(s) (SSN), Certificate to Collaborate Number(s), and any state professional or facility license number(s) of each board of directors member if applicable;

(c) Documentation and information demonstrating the amounts, levels and/or types of financial risk of all risk-bearing participants and directors of the organization;

(ed) Information evidencing that the memberships of the board of directors and any executive committee are inclusive and reflective of the gender, race, and geographical areas makeup of the Medicaid region;

(de) With respect to each board of directors member, identification whether each individual:

(i) is himself/herself a risk bearing participant or that he/she represents a risk bearing participant in the organization as described in Section 22-6-151(c)(1) of the Alabama Code, and the nature of his/her participation as a risk bearing participant. If he or she is a risk bearing participant or represents a risk bearing participant, detailed information concerning the profession or occupation, qualifications, training, expertise, experience and demonstrated abilities of the board member;

(ii) is a medical professional who provides care to Medicaid beneficiaries in the region and, if so, whether such individual is a primary care physician, an optometrist, or a pharmacist. The applicant shall certify that the medical professionals are appointed by the associations or organizations identified in Section 22-6-151 (c)(1)(b) of the Alabama Code and

(iii) is a community representative qualified, elected or appointed consistent with Section 22-6-151(c)(1)(c) of the Alabama Code.

(ef) With respect to each board of directors member, background information pertaining to any adverse action against any occupational, professional or vocational license or permits; criminal offenses other than civil traffic offenses; civil judgments involving dishonesty, breach of trust or foreclosure; and any bankruptcy proceeding.

(fg) Certification that a majority of the members of the board of directors do not and will not represent a single provider. Alternatively, certification that only one entity has offered to be a risk-bearing participant in the organization as defined in Section 22-6-151(c)(1) of the Alabama Code;

(h) Certification that six of the twelve risk-bearing participants required on the governing board of directors shall be "primary medical providers," "core specialists" and/or

“facilities” as defined in subsections (1)(a)-(c) of Rule No. 560-X-62-.12 in subsections (1)(a)-(e), or representatives thereof, who treat Medicaid beneficiaries in the region to be served by the organization.-

(18) All applications shall also include the following information concerning its citizen’s advisory committee for each Medicaid region the organization plans to serve for the Medicaid Agency’s review and approval:

(a) The name, occupation, mailing address, email address, and telephone number of each member of the citizen’s advisory committee;

(b) Information evidencing that the membership of the citizen’s advisory committee is inclusive and reflects the racial, gender, geographic, urban/rural and economic diversity of the region and the members of its citizen’s advisory committee;

(c) A description of the method the organization used to select the members of its citizen’s advisory committee;

(d) Identification of the members of the citizen’s advisory committee who are Medicaid beneficiaries who reside in the Medicaid region the organization plans to serve. It shall be applicant’s sole responsibility to obtain all necessary approvals, consents or waivers from Medicaid beneficiaries and to comply with all applicable laws regarding privacy and confidentiality related to such information before providing it to the Medicaid Agency;

(e) Identification of the members of the citizen’s advisory committee who are representatives of organizations that are part of the Disabilities Leadership Coalition of Alabama or Alabama Arise, or their successor organizations.

(19) All applications shall include a certification by the organization that all information entered on the application is true to the best of the organization’s knowledge, and:

(a) that all bargaining ~~in the creation on behalf~~ of the organization has been and will continue to be in good faith and consistent with Section 22-6-163 of the Alabama Code;

(b) that such bargaining has been and will continue to be necessary to identify appropriate service delivery systems and reimbursement methods in order to align incentives in support of integrated and coordinated health care delivery;

(c) that such bargaining has been and will continue to be necessary to provide quality health care to citizens who are Medicaid eligible at the lowest possible cost;

(d) that the organization is not an entity that must be excluded from contracts as a condition for federal financial participation pursuant to 42 C.F.R. § 438.808;

(e) that the organization does not have a prohibited affiliation with any individual debarred by a federal agency within the meaning of 42 C.F.R. § 438.610;

(f) that each risk bearing participant has the financial ability and solvency to satisfy his/her obligations as a risk bearing participant;

(g) that the applicant intends to provide services to Medicaid beneficiaries in all counties of each Medicaid region the organization plans to serve; ~~and;~~

(h) any other requirements set forth in rules promulgated by the Medicaid Agency.

(20) All agreements and contracts of the applicant shall be subject to review and/or approval by the Medicaid Agency pursuant to Section 22-6-163(d) of the Alabama Code.

(21) All financial reports and information requested from the applicant shall be subject to review and/or approval by the Medicaid Agency.

(22) The Medicaid Agency may inspect or request additional documentation and information from an applicant and from members or proposed members of the board of directors as the Medicaid Agency deems appropriate at any time to verify that the applicant will implement the Medicaid laws and regulations in accordance with the legislative intent and to engage in appropriate state supervision necessary to promote state action immunity under applicable law.

(23) The Medicaid Agency may conduct meetings and conferences with an applicant or its existing or proposed governing board members as the Medicaid Agency deems appropriate before certification of a regional care organization or at any other time to verify that the Medicaid laws are implemented in accordance with legislative intent. In addition to discussing information provided in the application, plans for establishing an adequate medical service delivery network, potential funding sources, organizational issues and other topics may be discussed.

(24) In determining whether an organization should be granted full certification as a regional care organization, The Medicaid Agency shall consider, in addition to criteria set forth in the RCO statutes and Medicaid applicable state and federal regulations, review the application, the results of the readiness assessment review, and documents submitted in connection therewith, the results of any review by the Centers for Medicare and Medicaid Services, and any additional documentation and information it considers relevant, including but not limited to the following; including the results of the readiness assessment review, and;

(a) Composition of the board of directors, including but not limited to the professions, qualifications, training, expertise, experience and demonstrated abilities of the risk bearing members, including which members are providers or representatives of providers to Medicaid beneficiaries and the types of providers;

(b) The amounts, levels and/or types of financial risk of all risk-bearing participants and directors in the organization. To be a risk bearing board member, the capitated contract and/or contribution of cash, capital or other assets contributed by the risk-bearing participant must be meaningful;

(c) The organizational structure and makeup of each organization as well as the persons and entities involved in each organization as members, owners, risk bearers or otherwise involved in the formation, ownership, structure, management, control and operation of the organization;

(d) The number of providers or representatives of providers on the executive committee and other committees; and

(e) Whether certification of such organization is believed by the Medicaid Agency to be in the best interest of the State and consistent with the requirements and legislative intent of Section 22-6-150, et seq. of the Alabama Code the RCO statutes.

(25) ~~if~~ the Medicaid Agency, in its sole discretion, determines that the applicant meets all the requirements for full certification, the Medicaid Agency shall issue the organization a certificate as a regional care organization.

(26) If a probationary regional care organization contracts with the Agency to perform case management services in accordance with ~~Ala. Code Section~~ 22-6-162 ~~of the Alabama Code~~ and Rule 560-X-62-.07, a failure to perform such services to the Agency's satisfaction may be grounds for denial of organization's application for full certification.

(27) The applicant shall promptly notify the Medicaid Agency of any substantial or material corrections or updates to the information provided in connection with its application. The applicant shall also promptly notify the Medicaid Agency of any vacancy and subsequent filling of any vacancy on the governing board of directors and of any appointments of an executive committee and members appointed thereto.

(28) All applications submitted pursuant to this rule, all Certificates as a Regional Care Organization, and the names and addresses of all applicants and their officers, directors and contact persons to whom the Medicaid Agency issues Certificates as a Regional Care Organization shall be public records and shall be subject to disclosure. The applicant shall submit to the Medicaid Agency one original application and one copy from which information may be redacted for which the applicant has legal authority or a good faith basis to assert that such information is confidential, personal and/or proprietary. The Medicaid Agency may, in its sole discretion, treat documents and information submitted in connection with the application as confidential and not subject to disclosure.

(29) Any person or entity may notify the Medicaid Agency of conduct of an applicant or a board of director's member that is alleged to violate any of the certifications by the applicant or the board member pursuant to this rule. The notice must be signed, in writing and include a statement of facts supporting the allegation or violation. Upon receipt of such notice or upon receipt of such information obtained by the Medicaid Agency on its own, the Medicaid Agency shall review the notice and conduct any inquiry it finds appropriate and may refer the allegation of the violation to the State of Alabama Attorney General. The Medicaid Agency may deny an application and may terminate certificates to collaborate or and an organization's certificate for full or probationary certification upon finding that the applicant or the board of director's member has failed to comply with applicable laws or regulations or violated any of the certifications required by from the

applicant or the board of director's member pursuant to ~~this rule~~ promulgated by the Medicaid Agency or ~~it~~ may, in its sole discretion, impose any other terms, ~~and conditions, and/or sanctions~~ determined necessary to effectuate the objectives of Certification.

(~~3029~~) Whenever an application is denied, the applicant will be afforded an opportunity for a hearing and rights of review in accordance with the requirements for contested case proceedings under the Alabama Administrative Procedure Act, Sections 41-22-1, *et seq.* A written request for a fair hearing must be received by the Medicaid Agency within thirty calendar days from the date the notice of action is mailed. The Medicaid Agency will not accept requests for fair hearings which are outside the thirty day limit.

Author: Stephanie Lindsay, Administrator, Administrative Procedures Office.

Statutory Authority: Code of Alabama, 1975 Section 22-6-150 *et seq.* and Section 41-22-1, *et seq.*; 42 C.F.R. Part 438

History: New Rule: Filed March 20, 2015; effective April 24, 2015. **Amended:** Filed July 13, 2015; effective August 17, 2015. **Amended:** Filed February 18, 2016;